

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EARL GENE BOX,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 18-CV-5266
	:	
JOHN WETZEL, <i>et al.</i> ,	:	
Defendants.	:	

MEMORANDUM OPINION

Schmehl, J. /s/ JLS

June 30, 2020

I. BACKGROUND

On December 6, 2018, Earl Gene Box (“Box”) filed a Complaint in this matter against Correct Care Solutions, LLC, Dr. Stephen Wiener, Dr. Jay Cowen (collectedly referred to as the “Medical Defendants”) and six Department of Corrections defendants. The Complaint sets forth a cause of action against the Defendants for not providing adequate medical care while Box was at the State Correctional Institutions at Dallas, Graterford, and Phoenix. Specifically, Box takes issue with the medical care that was provided to him for Hepatitis C, as he wanted to be treated with newer direct acting anti-viral drugs and claims that Defendants refused said treatment. Although Box was treated with these drugs after the instant action was filed, he claims the delay in treatment caused him injury.

II. PROCEDURAL HISTORY

After Box filed his Complaint in this matter on December 6, 2018, the Medical Defendants filed a Motion to Dismiss on September 25, 2019, and the DOC Defendants filed a Motion to Dismiss on October 23, 2019. On January 10, 2020, we granted Box’s motion for an enlargement of time to respond to both motions and ordered his response to be filed on or before

February 28, 2020. As of the date of this opinion, Box has failed to file a response to either Motion to Dismiss filed in this matter.

III. DISCUSSION

Box has failed to respond to the motions to dismiss filed by both the Medical Defendants and the DOC Defendants. Failure to make a timely response allows the court to treat a motion as uncontested. *Move Organization v. City of Philadelphia*, 89 F.R.D. 521, 523 (E.D. Pa. 1981). Further, there is no question that Box received copies of the motions to dismiss, as the certificates of service state that the motions were served upon him on September 25, 2019, and October 23, 2019, via the Pennsylvania Department of Corrections Smart Communications system at SCI-Phoenix. As of the date of this opinion, Box remains incarcerated at SCI-Phoenix. Box's response was due on or before February 28, 2020, and he has not responded, nor has he requested additional time to do so.

Rule 7.1(c) of the local Rules of Civil Procedure for the Eastern District of Pennsylvania provides that "[i]n the absence of a timely response, the motion may be granted as uncontested except as provided under [the Federal Rules of Civil Procedure governing summary judgment motions];" see also *Celestial Community Development Corp., Inc., v. City of Philadelphia*, 901 F.Supp.2d 566, 578 (E.D. Pa. 2010)(Gardner, J.) ("To put it simply: plaintiffs who fail to brief their opposition to portions of motions to dismiss do so at the risk of having those parts of the motions to dismiss granted as uncontested."); *Nelson v. DeVry, Inc.*, 2009 WL 1213640 (E.D. Pa. April 23, 2009)(Jones, J.) ("Failure to address even part of a motion in a responsive brief may result in that aspect of the motion being treated as unopposed."). Accordingly, the motions to dismiss of both the Medical Defendants and the DOC Defendants are granted as unopposed.

IV. CONCLUSION

For the reasons set forth above, Defendants' Motions to Dismiss are granted and the Complaint of Plaintiff, Earl Gene Box, is dismissed without prejudice.